

1 WILLIAM F. TARANTINO (CA SBN 215343)  
WTarantino@mofo.com  
2 MORRISON & FOERSTER LLP  
425 Market Street  
3 San Francisco, California 94105-2482  
Telephone: (415) 268-7000  
4 Facsimile: (415) 268-7522

5 BRITTANY SCHEINOK (CA SBN 306522)  
BScheinok@mofo.com  
6 MORRISON & FOERSTER LLP  
12531 High Bluff Drive Suite 100  
7 San Diego, California 92130-2040  
Telephone: (858) 720-5100  
8 Facsimile: (858) 720-5125

9 Attorneys for Defendant  
APPLE INC.

10  
11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN JOSE DIVISION**

14  
15 DOMINIQUE CAVALIER, KILEY KRZYZEK,  
KATHERINE WHEELER, MARLO RUSSELL,  
16 TERI GLAZEBROOK, and HEIDI FENTON,  
individually and on behalf of all others similarly  
17 situated,

18 Plaintiffs,

19 v.

20 APPLE INC., a California corporation,

21 Defendant.

Case No. 5:25-cv-713-PCP

**DEFENDANT APPLE INC.'S  
REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF ITS MOTION TO  
DISMISS PLAINTIFFS' FIRST  
AMENDED CLASS ACTION  
COMPLAINT**

Date: October 9, 2025

Time: 10:00 a.m.

Dept.: Courtroom 8 – 4th Floor

Judge: Honorable P. Casey Pitts

FAC Filed: May 5, 2025

1 Defendant Apple Inc. (“Apple”) respectfully requests that, in determining its accompanying  
2 Motion to Dismiss Plaintiffs’ First Amended Class Action Complaint (“Motion to Dismiss”), the  
3 Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the following  
4 documents attached to the accompanying Declaration of William F. Tarantino in Support of  
5 Apple’s Motion to Dismiss Plaintiffs’ First Amended Class Action Complaint (“Tarantino Decl.”):

- 6 1. A true and correct copy of the article: Alyssa Wicks, Heather D. Whitehead, and  
7 Graham F. Peaslee, *Presence of Perfluorohexanoic Acid in Fluoroelastomer Watch*  
8 *Bands*, 12 ENVIRONMENTAL SCIENCE & TECHNOLOGY LETTERS 1 (Dec. 18, 2024),  
9 <https://pubs.acs.org/doi/10.1021/acs.estlett.4c00907> (the “Peaslee Paper”). (Tarantino  
10 Decl. Ex. A.)
- 11 2. A true and correct copy of the document titled “Apple’s Commitment To Phasing Out  
12 Per- And Polyfluoroalkyl Substances (PFAS),” available at  
13 [https://www.apple.com/environment/pdf/Apple\\_PFAS\\_Commitment\\_November-](https://www.apple.com/environment/pdf/Apple_PFAS_Commitment_November-2022.pdf)  
14 [2022.pdf](https://www.apple.com/environment/pdf/Apple_PFAS_Commitment_November-2022.pdf) (“Apple’s PFAS Phaseout Commitment”). (Tarantino Decl. Ex. B.)
- 15 3. A true and correct copy of Apple’s English-language One (1) Year Limited Warranty  
16 for Apple Branded Products operative from November 19, 2021 to April 21, 2022.  
17 (Tarantino Decl. Ex. C.)
- 18 4. A true and correct copy of Apple’s English-language One (1) Year Limited Warranty  
19 for Apple Branded Products operative from April 22, 2022 to present. (Tarantino  
20 Decl. Ex. D.)

21 The Court may consider the contents of the Peaslee Paper, Apple’s PFAS Phaseout  
22 Commitment, and the Limited Warranties in ruling on Apple’s Motion to Dismiss under the  
23 incorporation by reference doctrine or by taking judicial notice.

24 Under the doctrine of incorporation by reference, a district court may consider documents  
25 “whose contents are alleged in a complaint and whose authenticity no party questions, but which  
26 are not physically attached to the [plaintiff’s] pleading.” *Knievel v. ESPN*, 393 F.3d 1068, 1076  
27 (9th Cir. 2005) (citation omitted). The Ninth Circuit has also extended the incorporation by  
28 reference doctrine to situations in which the plaintiff’s claim depends on the contents of a

document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document. *Id.*; *see also Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). A court may also properly consider a document that is crucial to the plaintiffs' claims, even if the contents or the existence of the document are not explicitly alleged in the complaint. *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998), *superseded by statute on other grounds as stated in Abrego v. Dow Chem. Co.*, 443 F.3d 676, 681 (9th Cir. 2006). The purpose of this rule is to "[p]revent[] plaintiffs from surviving a Rule 12(b)(6) motion by deliberately omitting . . . documents upon which their claims are based." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (citation omitted).

A district court may take judicial notice of matters that are either (1) generally known within the trial court's territorial jurisdiction, or (2) capable of accurate and ready determination based on sources whose accuracy cannot reasonably be questioned. *See Fed. R. Evid. 201(b)*. Proper subjects of judicial notice when ruling on a motion to dismiss include "publicly available" materials on accessible websites whose "existence cannot reasonably be questioned." *Opperman v. Path, Inc.*, 205 F. Supp. 3d 1064, 1068 n.3 (N.D. Cal. 2016); *Terraza v. Safeway Inc.*, 241 F. Supp. 3d 1057, 1067 (N.D. Cal. 2017) (taking judicial notice of definitions of terms "which are publicly available on the [] website" and because "Plaintiff does not oppose this request or otherwise contend that the documents are inaccurate").

The incorporation by reference and judicial notice doctrines apply here because Plaintiffs expressly reference and place at issue in the First Amended Complaint ("FAC") the Peaslee Paper and Apple's Limited Warranty. (*See* ECF No. 29 ("FAC") ¶¶ 121-22 (claiming the Peaslee Paper "tested 22 fluoroelastomer smart watch bands to determine their PFAS content" and "identified Apple as one of the brands of watch bands tested"); *id.* ¶ 83 ("Apple issues its standard warranty with the products"); *id.* ¶ 160 (claiming that a question common to "all members of the Class" is "[w]hether Defendant's alleged conduct violates applicable warranty laws").) While Plaintiffs do not expressly cite Apple's PFAS Phaseout Commitment, they refer to Apple's commitments to phasing out PFAS in the FAC. (*See id.* ¶¶ 22, 33, 44, 55 ("Apple has stated a future commitment to phasing PFHxA out of its products").) The copies of the Peaslee Paper, Apple's PFAS

1 Phaseout Commitment, and Apple’s Limited Warranty are attached to the Tarantino Declaration  
 2 are authentic, true, and correct copies, and each are publicly available. (See Tarantino Decl. ¶ 2  
 3 (Peaslee Paper publicly available at <https://pubs.acs.org/doi/10.1021/acs.estlett.4c00907>); *id.* ¶ 3  
 4 (Apple’s PFAS Phaseout Commitment available on Apple’s publicly available website at  
 5 [https://www.apple.com/environment/pdf/Apple\\_PFAS\\_Commitment\\_November-2022.pdf](https://www.apple.com/environment/pdf/Apple_PFAS_Commitment_November-2022.pdf)); *id.*  
 6 ¶¶ 4-5 (Apple’s Limited Warranties available at  
 7 <https://www.apple.com/legal/warranty/products/warranty-us.html>).)

8 Courts routinely take judicial notice of scientific articles, *see Riva v. Pepsico, Inc.*, 82 F.  
 9 Supp. 3d 1045, 1049 n.1 (N.D. Cal. 2015) (scientific articles that were publicly-available “from  
 10 the websites of government entities and organizations that host scientific academic journal  
 11 articles”); *Sidhu v. Bayer Healthcare Pharms. Inc.*, No. 22-cv-01603-BLF, 2023 WL 6541865, at  
 12 \*2 (N.D. Cal. Oct. 5, 2023) (publicly-available studies and FDA documents cited in complaint),  
 13 and corporate websites, *see Hamilton v. Gen. Mills, Inc.*, No. 6:16-cv-382-MC, 2016 WL  
 14 4060310, at \*2-3 (D. Or. July 27, 2016) (documents from corporate defendant’s website);  
 15 *Haskins v. Symantec Corp.*, No. 13-cv-01834-JST, 2013 WL 6234610, at \*1 n.1 (N.D. Cal. Dec.  
 16 2, 2013) (same). *See also Davidson v. Apple, Inc.*, No. 16-CV-04942-LHK, 2017 WL 976048, at  
 17 \*3 n.2 (N.D. Cal. Mar. 14, 2017) (granting Apple’s request for judicial notice of limited  
 18 warranty); *Oracle Am., Inc. v. Hewlett Packard Enter. Co.*, No. 16-cv-01393-JST, 2017 WL  
 19 635291, at \*2 (N.D. Cal. Feb. 16, 2017) (taking judicial notice of Oracle’s systems hardware and  
 20 support policies “during the relevant time periods because they were publicly available on  
 21 [Oracle’s] website and their existence cannot reasonably be questioned” (citation omitted)).

22 For the foregoing reasons, Apple respectfully requests that the Court take judicial notice  
 23 of Exhibits A-D to the Declaration of William F. Tarantino.

24 ///

25 ///

26 ///

27 ///

28 ///

1 Dated: June 16, 2025

MORRISON & FOERSTER LLP

2  
3 By: /s/ William F. Tarantino  
4 WILLIAM F. TARANTINO

5 Attorneys for Defendant  
6 APPLE INC.  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28